

INDIANA BOARD OF TAX REVIEW
Small Claims
Final Determination
Findings and Conclusions

Petition: 43-032-16-1-5-02069-16
Petitioners: Stephen P. & Carla A. Harris¹
Respondent: Kosciusko County Assessor
Parcel: 43-11-04-300-144.000-032
Assessment Year: 2016

The Indiana Board of Tax Review (Board) issues this determination in the above matter, and finds and concludes as follows:

Procedural History

1. The Petitioners initiated their 2016 assessment appeal with the Kosciusko County Assessor on May 17, 2016.
2. On October 25, 2016, the Kosciusko County Property Tax Assessment Board of Appeals (PTABOA) issued its determination lowering the assessment, but not to the level requested by the Petitioners.
3. The Petitioners timely filed a Petition for Review of Assessment (Form 131) with the Board, electing the Board's small claims procedures.
4. The Board issued a notice of hearing on September 27, 2017, scheduling a hearing on December 12, 2017. Due to inclement weather on December 12, 2017, the parties agreed to reschedule the hearing. The Board issued a notice of hearing on December 12, 2017, rescheduling the hearing for December 21, 2017.
5. Administrative Law Judge (ALJ) Patti Kindler held the Board's administrative hearing on December 21, 2017. She did not inspect the property.
6. Stephen P. Harris appeared *pro se*. Kosciusko County Assessor Susan Engelberth represented the Respondent. Certified residential appraiser John P. Beer was a witness for the Respondent. All were sworn and testified.

Facts

7. The property under appeal is a single-family residence located at 1755 Jenny Lane in Warsaw.

¹ Although only Stephen P. Harris' name is listed on the Form 131, both Stephen P. Harris and Carla A. Harris are listed on the Taxpayer's Notice to Initiate an Appeal (Form 130), Notification of Final Assessment Determination (Form 115), Notice of Assessment of Land and Improvements (Form 11), and the subject property record card.

8. The PTABOA determined the total assessment is \$256,100 (land \$39,100 and improvements \$217,000).
9. The Petitioners requested a total assessment of \$225,000 (land \$23,300 and improvements \$201,700).

Record

10. The official record for this matter is made up of the following:

- a) Form 131 with attachments,
- b) A digital recording of the hearing,
- c) Exhibits:

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| Petitioner Exhibit 1: | Aerial photograph of the subject property, |
| Petitioner Exhibit 2: | Settlement statement for the Vacant Lot 9 Spring Hills Acres 4 th Add., |
| Petitioner Exhibit 3: | Aerial map, Beacon assessment data, and property record card for 725 Persimmon Drive in Warsaw, |
| Petitioner Exhibit 4: | July 16, 1992, estimate from Cripe Excavating for fill dirt and use of bulldozer, |
| Petitioner Exhibit 5: | April 13, 1992, estimate from Troy Ousley for seawall, anchors, riprap, stump removal, and addition of boat ramp, |
| Petitioner Exhibit 6: | June 30, 1992, invoice from John Camden Construction for pilings, |
| Petitioner Exhibit 7: | Photograph of a channel near the subject property, |
| Petitioner Exhibit 8: | Petitioners' analysis of the land calculation, home value, and summary. |
| | |
| Respondent Exhibit A: | Sales-comparison analysis prepared by John Beer with an effective date of January 1, 2016, |
| Respondent Exhibit B: | Aerial map of the subject property, |
| Respondent Exhibit C: | Warranty deed for 1751 Jenny Lane, |
| Respondent Exhibit D: | 2013 sales disclosure for 1751 Jenny Lane and vacant lot, |
| Respondent Exhibit E: | 2014 sales disclosure for 1751 Jenny Lane and vacant lot, |
| Respondent Exhibit F: | 2017 sales disclosure for 1751 Jenny Lane, |
| Respondent Exhibit G: | Multiple Listing Service (MLS) sheets for 1751 Jenny Lane. |

- Board Exhibit A: Form 131 with attachments,

Board Exhibit B: Notices of hearing dated September 27, 2017, and December 12, 2017,
Board Exhibit C: Hearing sign-in sheet.

d) These Findings and Conclusions.

Objections

11. Ms. Engelberth objected to Petitioners' Exhibit 2 because it is a "current sale" that occurred within the last 15 days and it was "never offered on the market."
12. In response, Mr. Harris argued he "chose small claims so that everything is admissible." He also claimed the lot in question has been on the market since 2014 and its recent purchase price is relative to the subject property's 2016 value.
13. The ALJ overruled the objection, ruling that it goes more to the weight of the exhibit than its admissibility. The Board adopts the ALJ's ruling and admits Petitioners' Exhibit 2. In doing so, the Board notes this ruling ultimately does not effect this final determination.

Contentions

14. Summary of the Petitioners' case:
 - a) The property's assessment is too high. The home is situated on a lot that includes a 0.43-acre utility easement and is subject to flooding. Nothing can be built on the area encumbered by the easement. Furthermore, "the lake water is low in the area that fronts the property," and the view of the lake is obstructed. Thus, while the property is technically located on a Pike Lake channel, it should be valued as a creek-front property rather than a channel-front property. *Harris argument.*
 - b) The low water level is caused by silt coming from Deeds Creek and filling into the area in front of the property. As a result, the Petitioners are unable to use their pontoon boat because the water is too low. Additionally, the Petitioners' "sprinkling system" has been increasingly difficult to maintain, and soon will no longer be usable. These factors negatively affect the property's value, because prospective buyers of lake property want to be able to dock a boat and have a sprinkler system. *Harris argument; Pet'rs Ex. 7.*
 - c) In an effort to support their argument the property is over assessed, the Petitioners presented evidence of their purchase of an adjacent vacant lot. This vacant lot was purchased on December 5, 2017, for \$12,500. Similar to their residential lot, the vacant lot has "a lot of problems." In order to build on it, pilings would have to be installed, fill dirt would need to be applied "to bring it up to the 100-year flood plain," and a seawall would need to be built. A renovation such as this would cost approximately \$60,000. *Harris argument; Pet'rs Ex. 1, 2.*

- d) The Petitioners are familiar with high renovation costs. In order to build on the subject property they incurred the following costs in 1992: \$1,800 for fill dirt and bulldozing; \$6,400 for a seawall, anchors, riprap, stump removal; \$6,400 for a boat ramp; and \$22,590 for 57 pilings. *Harris testimony; Pet'rs Ex. 4, 5, 6.*
- e) The Petitioners also presented evidence of a sale of a neighboring property. This property was purchased via an arm's-length transaction on June 6, 2014, for \$16,900. *Harris argument; Pet'rs Ex. 3, 8.*
- f) Finally, the Petitioners argued the sale of neighboring property for \$184,900 supports their position. This property includes a "comparable size house on two lots." Taking all of this into consideration, the Petitioners opine their property "would not sell for over \$225,000." *Harris argument; Pet'rs Ex. 8.*

15. Summary of the Respondent's case:

- a) The property is correctly assessed. The increase in the assessment is a result of the 2016 cyclical reassessment. At that time, the lot dimensions were corrected to the original plat, a negative 10% factor was applied for its location in a flood zone, and a negative 25% influence factor was applied for its substandard channel location. *Engelberth argument.*
- b) In an effort to prove the assessment is correct, the Respondent presented a sales-comparison analysis prepared by John Beer, a certified residential appraiser. Mr. Beer developed an "analysis" rather than a full appraisal report. However, Mr. Beer testified that he followed the Uniform Standards of Professional Appraisal Practice (USPAP) guidelines in the same manner as he does when preparing a full appraisal report. In his analysis, Mr. Beer utilized three channel properties that were "pretty good" comparisons to the subject property. He estimated the total value of the subject property was \$256,000 as of January 1, 2016. *Beer testimony; Resp't Ex. A.*
- c) The first property, located at 705 Ross Avenue, sold for \$161,500 on July 13, 2015. The residence is a ranch-style home that is similar to the subject property, but smaller and "much simpler" in design. The lot is also smaller and includes less water frontage. In order to account for differences, Mr. Beer made a positive adjustment for size and room count, and a positive adjustment to account for land differences. After the proper adjustments were made, the indicated value for this property was \$246,660. *Beer testimony; Resp't Ex. A.*
- d) The second property, located at 713 Ross Avenue, is situated in a flood zone, so "it compares favorably" with the subject property. This property sold for \$187,000 on May 13, 2015. This lot is smaller than the subject property and only has 88 feet of frontage. The residence is a ranch-style home with a "simple design" and a "C" grade. The subject property is graded "C+2." Positive adjustments were made to account for the quality of construction, and to account for size differences. After

adjustments were calculated, the indicated value for this property was \$257,990. *Beer testimony; Resp't Ex. A.*

- e) The third property, located at 2138 Bluewater Drive, is also situated in a flood zone. This property sold for \$230,000 on November 3, 2014. Mr. Beer admitted this sale was from “the previous year,” but he testified he had difficulty locating “small lake” comparable sales within the relevant timeframe. While this property has a smaller lot, it is located in an area that has higher land values. As a result, Mr. Beer applied a negative adjustment for the land portion. The home is smaller than the subject property and only has two bedrooms, so a positive adjustment was made to account for room count and living area. A positive adjustment was made to account for a “slightly smaller” garage. Finally, a negative adjustment was applied to account for the home’s “nicer series of porches and decks.” After the adjustments were calculated, this property’s indicated value was \$257,770. *Beer testimony; Resp't Ex. A.*
- f) The average indicated value for the three comparable properties equated to \$254,140. While the median value equated to \$257,770. Because the average and the median “bracket” the subject property’s 2016 assessment of \$256,100, Mr. Beer concluded that his sales analysis supports the current assessment. *Beer argument; Resp't Ex. A.*
- g) Additionally, as part of his analysis, Mr. Beer examined channel-front sales that occurred between December 2003 and December 2017. According to his analysis, Mr. Beer determined that channel-front property values have steadily increased. *Beer testimony; Resp't Ex. A, B.*
- h) The Petitioners’ reliance on the sale of 1751 Jenny Lane is flawed. This property was transferred to Mutual Bank in lieu of foreclosure on December 16, 2013. Mutual Bank then sold the property, including a vacant lot, on February 21, 2014, for \$99,900. On July 6, 2017, the property sold again, but without the vacant lot, for \$184,900. Even though this sale is too far removed from the relevant valuation date, it still supports the current assessment of the subject property because this property has “less frontage.” *Engelberth argument; Resp't Ex. C, D, E, F, G.*

Burden of Proof

- 16. Generally, the taxpayer has the burden to prove that an assessment is incorrect and what the correct assessment should be. *See Meridian Towers East & West v. Washington Twp. Ass'r*, 805 N.E.2d 475, 478 (Ind. Tax Ct. 2003); *see also Clark v. State Bd. of Tax Comm'rs*, 694 N.E.2d 1230 (Ind. Tax Ct. 1998). The burden-shifting statute as amended by P.L. 97-2014 creates two exceptions to that rule.
- 17. First, Ind. Code § 6-1.1-15-17.2 “applies to any review or appeal of an assessment under this chapter if the assessment that is the subject of the review or appeal is an increase of more than five percent (5%) over the assessment for the same property for the prior tax year.” Ind. Code § 6-1.1-15-17.2(a). “Under this section, the county assessor or

township assessor making the assessment has the burden of proving that the assessment is correct in any review or appeal under this chapter and in any appeals taken to the Indiana board of tax review or to the Indiana tax court.” Ind. Code § 6-1.1-15-17.2(b).

18. Second, Ind. Code § 6-1.1-15-17.2(d) “applies to real property for which the gross assessed value of the real property was reduced by the assessing official or reviewing authority in an appeal conducted under IC 6-1.1-15.” Under those circumstances, “if the gross assessed value of real property for an assessment date that follows the latest assessment date that was the subject of an appeal described in this subsection is increased above the gross assessed value of the real property for the latest assessment date covered by the appeal, regardless of the amount of the increase, the county assessor or township assessor (if any) making the assessment has the burden of proving that the assessment is correct.” Ind. Code § 6-1.1-15-17.2(d). This change was effective March 25, 2014, and has application to all appeals pending before the Board.
19. Here, the parties agree the assessed value of the subject property increased by more than 5% from 2015 to 2016. In fact, the total assessment increased from \$234,100 in 2015 to \$256,100 in 2016. The Respondent conceded that the burden rests with her. Thus, according to Ind. Code § 6-1.1-15-17.2 the Respondent has the burden to prove the 2016 assessment is correct.

Analysis

20. The Respondent made a prima facie case that the 2016 assessment is correct.
 - a) Real property is assessed based on its market value-in-use. Ind. Code § 6-1.1-31-6(c); 2011 REAL PROPERTY ASSESSMENT MANUAL at 2 (incorporated by reference at 50 IAC 2.4-1-2). The cost approach, the sales comparison approach, and the income approach are three generally accepted techniques to calculate market value-in-use. Assessing officials primarily use the cost approach, but other evidence is permitted to prove an accurate valuation. Such evidence may include actual construction costs, sales information regarding the subject or comparable properties, appraisals, and any other information compiled in accordance with generally accepted appraisal principles.
 - b) Regardless of the method used, a party must explain how the evidence relates to the relevant valuation date. *O’Donnell v. Dep’t of Local Gov’t Fin.*, 854 N.E.2d 90, 95 (Ind. Tax Ct. 2006); *see also Long v. Wayne Twp. Ass’r*, 821 N.E.2d 466, 471 (Ind. Tax Ct. 2005). For a 2016 assessment, the valuation date was January 1, 2016. See Ind. Code § 6-1.1-2-1.5.
 - c) The burden was on the Respondent to prove the current assessment is correct. In an effort to prove that, the Respondent offered a sales-comparison analysis completed by John Beer, a certified residential appraiser. Mr. Beer estimated the subject property’s market value-in-use at \$256,000 as of January 1, 2016.

- d) To effectively use the sales-comparison approach as evidence in a property tax appeal, the proponent must establish the comparability of the properties being examined. Conclusory statements that a property is “similar” or “comparable” to another property are not sufficient. *Long*, 821 N.E.2d at 470. Instead, the proponent must identify the characteristics of the subject property and explain how those characteristics compare to the characteristics of the purportedly comparable properties. *Id.* at 471. Similarly, the proponent must explain how any differences between the properties affect their relative market values-in-use. *Id.*
- e) Mr. Beer accomplished this, and testified he complied with USPAP guidelines in doing so. The Board notes, however, that all three of Mr. Beer’s purportedly comparable properties sold for significantly less than the subject property’s current assessment. The Board also notes Mr. Beer’s adjustments seem a bit excessive. Additionally, it is not clear if Mr. Beer considered the problems being caused by the influx of creek silt. Nonetheless, the Petitioners failed to impeach Mr. Beer’s analysis. Because Mr. Beer is a licensed appraiser, the Board is generally inclined to give his opinions and conclusions at least some weight. Thus, while it is admittedly a close call, the Board finds that based on Mr. Beer’s analysis, the Respondent minimally made a prima facie case supporting the current assessment. The burden therefore shifts to the Petitioner.
- f) In an effort to prove their property was over assessed, the Petitioners argued their land value is diminished by an obstructed view of the lake, shallow channel water in front of their property, and flooding. They also argued their land value is hindered by a large gas line easement. However, simply listing a property’s deficiencies does not prove it is incorrect assessed. Instead, a party must offer probative evidence to establish how the deficiencies affect the property’s market value-in-use, and assign a value.
- g) The Petitioners did attempt to provide some market based evidence in the form of sales information for two neighboring properties. However, these sold outside the relevant timeframe for a 2016 appeal. Further, while the Petitioners testified regarding similarities and differences among the purportedly comparable properties, they did little to show how those similarities and differences affect the relevant market values-in-use. Here, the type of analysis required by *Long* is missing from the Petitioners’ evidence. *Long*, 821 N.E.2d at 471. For these reasons, the Petitioners’ sales-comparison analysis lacks probative value.
- h) Finally, the Petitioners offered renovation costs from 1992. While the Board agrees the subject property is not perfect, renovation costs from 1992 ultimately have no bearing on a 2016 appeal. For these reasons, the Petitioners failed to make a case for reducing the 2016 assessment.

Conclusion

21. The Board finds for the Respondent.

Final Determination

In accordance with these findings and conclusions, the 2016 total assessment will not be changed.

ISSUED: March 21, 2018

Chairman, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

Commissioner, Indiana Board of Tax Review

- APPEAL RIGHTS -

You may petition for judicial review of this final determination under the provisions of Indiana Code § 6-1.1-15-5 and the Indiana Tax Court's rules. To initiate a proceeding for judicial review you must take the action required not later than forty-five (45) days of the date of this notice.

The Indiana Code is available on the Internet at <<http://www.in.gov/legislative/ic/code>>. The Indiana Tax Court's rules are available at <<http://www.in.gov/judiciary/rules/tax/index.html>>.